

**IN THE U.S. DISTRICT COURT FOR MARYLAND,  
SOUTHERN DIVISION**

**BEYOND SYSTEMS, INC.**

Plaintiff,

v.

**WORLD AVENUE USA, LLC**  
successor by merger to NIUTECH, LLC.,  
**DBA "THE USEFUL," ET AL.**

Defendants.

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**Case No. PJM 08 cv 0921**

**DECLARATION OF PAUL A. WAGNER**  
**ON WAUSA'S 4<sup>TH</sup> SET OF REQUESTS FOR PRODUCTION**

I, Paul A. Wagner, state the following under oath:

1. I am over 18 years of age, have personal knowledge of the matters stated below unless otherwise indicated, and am competent to testify to the facts set forth in this Declaration.

2. The document requests seek documents pertaining mainly to some of BSI's customers from years ago. World Avenue states in its Motion to Compel responses to its 4th set of RPD, at page 2 :

WAUSA served non-party subpoenas on a number of BSI's so called customers, and not surprisingly, the vast majority of these so-called customers stated that they had no documents or did not know BSI. See, e.g., Exhibits I, M, and N.

3. I am aware that all of the BSI customers portrayed in Exhibits I, M, and N know BSI, and the exhibits do not show otherwise.

World Avenue states, further: [p. 2]

The remaining BSI "customers" produced documents about Hypertouch, Inc., but not BSI. See, e.g., J, K, and L.

Exhibits J, K, and L reflect a single customer, not multiple customers. They show three communications from Julienne Correa, a close friend of Joe Wagner, to Hypertouch. The exhibits do not show her denying possession of documents relating to BSI (that she knows of), though that could be the case.

4. My last written communications directly with Bradley Clark of C3 Stats were in April 2000. Between November 1997 and October 1999, C3 Stats paid BSI initially \$ 400 and later \$ 325 per month for server co-location, use of a T-1 line and other Internet services from BSI. BSI has no copy of the checks.

5. Request 2 asks about a purported major "customer" of BSI, the Prince Hanoi Hotel in Vietnam. BSI has never characterized the Prince Hotels in Hanoi as being a "major" customer or a minor customer. The Hotels' web site does in fact operate on BSI's premises. BSI and Hypertouch each serve the Prince Hotels in different capacities. BSI has provided DNS and web hosting services for princehotelhanoi.com.

6. The Hotel web site running on BSI's premises is still in use. The order form was functional during 2005 and 2006, during the period when most of the emails giving rise to this suit were sent. My understanding is that most bookings are made via telephone and email. An alternative web site, <http://hanoi.princehotel.com>, is hosted in Vietnam. The second site goes down periodically, while <http://www.princehotelhanoi.com> stays up.

7. Keivan Khalichi paid BSI by check for Internet services. BSI does not have a copy.

8. I have gone to Alton Burton's office approximately once each year, and while there, have used his conference room to conduct BSI business by computer and by telephone.

9. WAUSA states in its Motion : [p. 16]

The documents sought are directly relevant because -- contrary to Paul Wagner's Declaration -- St. Luke's House responded to a Rule 45 Subpoena and denied that it had any documents relating to any services that BSI supposedly provided to it. See Subpoena and Subpoena Response attached as Exhibits H and I.

10. The subpoena was directed to "Diane Wagner or any other person authorized to accept service." Diane Wagner is not the registered agent for St. Luke's House, Inc., and I understand that she is not authorized to accept service for that corporation. I am familiar with her level of knowledge about computers, and know that she would not be the right person to handle the task of locating and producing documents, whether paper or digital, pertaining to IT services of the type provided by BSI.

11. The Young Woman's Christian Home has a new resident director, who might not know the whereabouts of the earlier documents relating to BSI. BSI has many such documents.

12. Barcroftcycle's last payment to BSI for Internet services was on or around July 2, 2008 in the amount of \$35.99.

13. BSI provided Internet services to IBM, the NASD and Motorola bundled with consulting engagements between 1996 and 2000.

I declare under penalties of perjury that the foregoing statements are true and correct.

Date: 07/02/10

  
Paul Wagner